

Audit

Report



OFFICE OF THE INSPECTOR GENERAL

ACQUISITION OF AUTOMATED DATA PROCESSING EQUIPMENT BY THE DEFENSE INTELLIGENCE AGENCY

Report Number 92-084

May 1, 1992

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Department of Defense

DISTRIBUTION STATEMENT A

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The following acronyms are used in this report.

ADP.....	Automated Data Processing
AIA.....	Army Intelligence Agency
CICA.....	Competition in Contracting Act
CLIN.....	Contract Line Item Number
COTR.....	Contracting Officer's Technical Representative
CPU.....	Central Processing Unit
DIA.....	Defense Intelligence Agency
DFARS.....	DoD Federal Acquisition Regulation Supplement
DODIIS.....	DoD Intelligence Information System
FAR.....	Federal Acquisition Regulation
FSTC.....	Foreign Science and Technology Center
GSA.....	General Services Administration
IBM.....	International Business Machines Corporation
OSD.....	Office of the Secretary of Defense
VACA.....	Virginia Contracting Activity



INSPECTOR GENERAL
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May 1, 1992

MEMORANDUM FOR DIRECTOR, DEFENSE INTELLIGENCE AGENCY

SUBJECT: Audit Report on the Acquisition of Automated Data Processing Equipment by the Defense Intelligence Agency (Report No. 92-084)

We are providing this final report for your information and use. Comments on a draft of this report were considered in preparing the final report. The audit was made in response to a request by the Chairman of the House Permanent Select Committee on Intelligence and addresses a contract awarded to International Business Machines Corporation for automated data processing equipment and services.

A draft of this report was provided to the Defense Intelligence Agency (DIA) for comment on January 17, 1992. The DIA provided comments on March 17, 1992. The DIA concurred with each finding and recommendation but did not provide a fully responsive action plan regarding Recommendation C.2. DoD Directive 7650.3 requires that all audit recommendations be resolved promptly. Therefore, you must provide final comments on the unresolved issue by June 22, 1992. See the "Status of Recommendations" section at the end of Finding C for the specific requirements for your comments. If appropriate, you may propose alternative methods for accomplishing desired improvements. Recommendations are subject to resolution in accordance with DoD Directive 7650.3, in the event of nonconcurrence or failure to comment.

The courtesies extended to the audit staff are appreciated. If you have any questions about this audit, please contact Mr. Terry McKinney at (703) 614-1692 (DSN 224-1692) or Mr. James Hutchinson at (703) 693-0138 (DSN 223-0138). The distribution of this report is listed in Appendix C.

Robert J. Lieberman
Robert J. Lieberman
Assistant Inspector General
for Auditing

CC:

Secretary of the Army
Secretary of the Navy
Secretary of the Air Force
Commandant of the Marine Corps

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This report was prepared by the Financial Management Directorate, Office of the Assistant Inspector General for Auditing, DoD. Additional copies of the report can be obtained from the Information Officer, Audit Planning and Technical Support Directorate, (703) 614-6303.

Office of the Inspector General

**AUDIT REPORT NO. 92-084
(Project No. 1FE-5013)**

May 1, 1992

**ACQUISITION OF AUTOMATED DATA PROCESSING EQUIPMENT
BY THE DEFENSE INTELLIGENCE AGENCY**

EXECUTIVE SUMMARY

Introduction. The Defense Intelligence Agency (DIA) is responsible for providing timely and reliable military intelligence to the Secretary of Defense, the Joint Chiefs of Staff, and the DoD Components. In meeting this responsibility, DIA relies heavily on Automated Data Processing (ADP) systems and resources and is the functional manager of the DoD Intelligence Information System (DODIIS). DODIIS provides a worldwide linkage between the ADP systems of various DoD intelligence activities. As the DODIIS manager, DIA supports DODIIS components with the award of ADP requirements-type contracts. Our audit focused on the award and management of such a contract for ADP equipment and services with International Business Machines Corporation (IBM). This 5-year contract (Contract No. MDA908-88-D-9277) was awarded in 1988 and is valued at over \$64 million.

This audit was made at the request of the Chairman of the House Permanent Select Committee on Intelligence. The Committee had received allegations that the contract award had been "wired" to IBM and that the contract had been improperly used.

Objectives. Our overall audit objective was to determine whether the procurement was properly awarded and remains a legitimate and economical means of acquiring computer equipment. A secondary objective was to determine the adequacy of internal controls related to the acquisition.

Audit Results. Overall, we concluded that the contract was not properly awarded and is not a legitimate or necessarily economical way of obtaining computer equipment. Both before and during our audit, DIA contracting officials took or planned to take actions to address several of the problems addressed in this report.

- The acquisition was not planned or documented in accordance with applicable acquisition regulations. As a result, the type of contract awarded was not justified, and the contract was not appropriately controlled. Additionally, OSD had no oversight of the acquisition (**Finding A**).

- The contract award met procedural requirements, but the procurement did not meet the intent of the Competition in Contracting Act. The specifications were unduly biased, and competition was unreasonably restricted. Accordingly, neither adequate competition nor an assurance of obtaining the lowest overall costs were achieved (**Finding B**).

- The DIA contract was inappropriately modified beyond its original scope and has not been well-managed. In effect, the contract has been invalidated (**Finding C**).

Internal Controls. We identified no material internal control weaknesses related to acquisition but found lesser control deficiencies. A description of the controls assessed is on page 2, and the control deficiencies are discussed in Findings B and C in Part II of the report.

Potential Benefits of Audit. The recommendations in this report, if implemented, should provide improved planning, fairer and more intense competition for contracts, and better contract management in future DIA acquisitions. See Appendix A for details.

Summary of Recommendations. We recommended that the contract be terminated or no longer used. We also recommended that future acquisitions be based on documented requirements and that planning requirements be well-defined. Additionally, we recommended that DIA emphasize fully competitive acquisition procedures, use independent opinions to help guard against undue bias or restrictiveness and to better manage contracts, and incorporate a method of maintaining favorable prices throughout multiyear contracts awarded in the future.

Management Comments. The Director, Defense Intelligence Agency, concurred with all findings and recommendations, but did not provide an action plan to fully satisfy Recommendation C.2.

We request that the Director, Defense Intelligence Agency, provide additional comments on the final report by June 22, 1992. Management comments are discussed in Part II of the report, and the full text of management comments is in Part IV.

PART I - INTRODUCTION

Background

In 1986, the Defense Intelligence Agency (DIA) agreed to provide procurement support in acquiring a powerful computer and major peripheral components for the Army's Foreign Science and Technology Center (FSTC). During solicitation development, DIA's Directorate for Procurement, commonly known as the Virginia Contracting Activity (VACA), decided to use the acquisition to satisfy the potential needs for similar equipment for other elements of the DoD Intelligence Information System (DODIIS). DODIIS is an "umbrella" network system, linking DIA computers with those of intelligence activities of the armed services and other DoD Components on a worldwide basis. Although DIA initiated a competitive procurement, it received only one proposal, and on July 27, 1988, awarded a 5-year contract (MDA908-88-D-9277) to International Business Machines Corporation (IBM). At contract award, the contract was estimated to be worth about \$19 million, but is now valued at more than \$64 million.

In response to allegations made to the Chairman, House Permanent Select Committee on Intelligence, on April 10, 1991, we were asked to review the acquisition, focusing on whether the provisions of the Competition in Contracting Act (CICA) had been met and whether the contract had been executed within its scope. The allegation stated that the solicitation was unduly restrictive and so biased that only IBM risked the expense of preparing a proposal and that the contract had improperly provided for the noncompetitive procurement of automated data processing (ADP) equipment worth millions of dollars.

Historically, fully competitive procurements have garnered lower prices. In 1984, Congress passed the CICA to increase competition in Government contracting. By requiring high-level agency officials to approve acquisitions employing limited competitive procedures, full and open competitions are encouraged, allowing all responsible sources to submit offers. By stressing fully competitive procurements, the basic intent of the CICA is for Federal agencies to obtain goods and services at the best price available.

Objectives

Our overall audit objective was to determine if the contract was properly awarded and remains a legitimate and economical means of acquiring computer equipment. Specifically, we reviewed the acquisition process to determine whether the solicitation and award were conducted within the requirements and intent of the CICA, whether management actions have violated the contract's scope and limitations, and the attractiveness of contract prices. We also evaluated the adequacy of internal controls related to the acquisition.

Scope

Audit coverage. Our audit addressed the acquisition and management of a single contract between the DIA and IBM. We reviewed all available documentation developed from March 1985 through September 1991 related to the contract. We examined documents in DIA's official contract file and other documents prepared by DIA and FSTC. We also interviewed various members of the DODIIS community and other DoD organizations, IBM and other potential vendors, and civilian Federal agencies. We consulted with procurement organizations expert in ADP acquisitions on steps taken and judgments made throughout the acquisition. We examined and analyzed the determination of requirements, fairness of specifications, propriety of contract award, and the soundness of contract administration.

Audit period, locations, and standards. This economy and efficiency audit was performed from April through October 1991. Audit work was primarily accomplished at DIA and FSTC, but we also performed work at other DoD activities and visited personnel having key roles in the acquisition. Appendix B lists the major activities we visited or contacted. The audit was made in accordance with auditing standards issued by the Comptroller General of the United States as implemented by the Inspector General, DoD. Because the audit was limited to a single acquisition, we did not conduct tests to determine the general adequacy or effectiveness of related DIA internal controls.

Internal Controls

We reviewed DIA's policies and procedures related to approving, planning, conducting, and monitoring this acquisition. We identified control deficiencies that were due to noncompliance with procedures instead of a lack of control procedures. Additionally, before and during the audit, several acquisition controls were strengthened. Because we reviewed only one contract, we had no basis for concluding that failure to follow established control procedures is a systemic problem. Also because we reviewed only one contract, we did not broadly evaluate DIA's implementation of the Federal Managers' Financial Integrity Act. We identified no material internal control weaknesses.

Prior Audits and Other Reviews

Representatives of the Office of the Deputy Assistant Secretary of Defense for Procurement (now the Director of Defense Procurement) conducted a broad review of DIA procurement procedures and practices and issued the DIA Procurement Management Review Report on April 27, 1988. The team found several major deficiencies and made numerous recommendations

regarding unacceptable contract audit trails, routine approvals for limited competition, and inadequate contract administration.

The Inspector General, DoD, performed an inspection of DIA and issued Report No. 91-INS-06, "Defense Intelligence Agency Inspection Report," on April 5, 1991. The inspectors found that acquisition planning requirements and procedures were not being enforced. Recommendations were made to strengthen acquisition planning practices.

DIA basically agreed with all the recommendations and took or planned to take future actions to implement them. We noted, however, that in responding to the Inspector General, DoD, report, DIA stated that lack of enforcement of acquisition procedures has not allowed procurement irregularities to occur. We believe the results of our current audit substantially counter that position.

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PART II - FINDINGS AND RECOMMENDATIONS

A. ACQUISITION PLANNING AND OVERSIGHT

Although contract MDA908-88-D-9277 was awarded to support the DODIIS community, the acquisition was not adequately coordinated within the DODIIS community, based on DODIIS community-wide requirements, or appropriately reviewed. Federal and DoD acquisition regulations stress the importance of coordinated planning and require the preparation of detailed acquisition plans, but no formal acquisition plan addressing the requirements of the DODIIS community was developed. Additionally, the contract normally would have been subject to OSD oversight, but the then-applicable OSD oversight policy did not specifically include DIA. As a result, the acquisition did not comply with Federal or DoD regulations, the type of contract awarded was not justified, and the contract was not managed appropriately.

DISCUSSION OF DETAILS

Background. This acquisition was one of several originally planned by the Army Intelligence Agency (AIA) to upgrade the computing and networking capabilities of its activities. In 1986, one of those activities, the FSTC, persuaded DIA to manage the procurement of a general-purpose computer. Between 1986 and 1988, the DIA solicitation evolved to include the defined requirements of two other AIA activities and a Navy activity. However, when the solicitation was issued in October 1987, its stated purpose was to acquire ADP equipment to meet the needs of all elements of the DODIIS.

Acquisition planning is required to ensure a coordinated and integrated acquisition effort, resulting in the Government meeting its needs in the most effective, economical, and timely manner. The Federal Acquisition Regulation (FAR) sets forth general acquisition planning requirements and tasks agencies to specify those situations for which a written plan shall be prepared. Part 7 of the Defense FAR Supplement (DFARS), "Acquisition Planning," requires that detailed plans be developed for production and service acquisitions with anticipated total costs of at least \$15 million or costs of \$5 million or more in any fiscal year. As the acquisition cost or complexity increases, so should the amount of detailed planning. The written plan should explain the acquisition background and objectives and set forth planned actions for accomplishing the acquisition. The plan should document such acquisition factors and associated rationales as life-cycle costs, prospective sources, degree of competition, source selection procedures, type of contract anticipated, and alternative acquisition approaches considered.

DoD has long emphasized ADP acquisitions that maximize competition and the lowest total overall cost consistent with mission requirements. Accordingly, the acquisition and management of costly ADP systems is subject to high-level DoD oversight. Due to large expenditures on requirements and indefinite-quantity contracts for ADP equipment, in 1987, the OSD broadened review and oversight requirements. For requirements contracts expected to cost at least \$10 million during any fiscal year, OSD required that management plans be developed and implemented before issuance of the solicitation and that supplementary ADP budget exhibits be developed and reported. Contracts identified as meeting these criteria between budget submissions had to be immediately reported to OSD. Additionally, selected projects costing more than \$25 million in a single year or \$100 million over the contract life would be intensively reviewed.

Acquisition planning. We found no evidence that DIA employed a structured, disciplined acquisition planning process. Although required by Federal and DoD acquisition regulations, the contract files did not contain planning documents that addressed the acquisition approaches considered, anticipated steps to be taken during the acquisition process, or rationales used by DIA in making key acquisition decisions. Further, the DIA Acquisition Manual, DIA Manual 44-2, does not detail the requirements for planning acquisitions with expected total costs greater than \$15 million or costs exceeding \$5 million for any fiscal year. The lack of thorough planning by DIA was largely responsible for problems experienced in later phases of the acquisition (see Findings B and C). Inadequate planning also directly contributed to questionable DIA actions and decisions regarding contract coordination, type, and costing methodology.

Coordination. DIA did not adequately coordinate the acquisition with other DODIIS community members. We found scant evidence that DIA communicated acquisition objectives, schedules, problems, status, plans, or any other relevant factor to community members other than FSTC. Coordination during the acquisition process was severely deficient, and the resultant contract did not represent integrated efforts. For instance, in developing estimated quantities of equipment to be contracted for, DIA incorporated only FSTC's estimates. Accordingly, the Request for Proposal's estimated quantities were unrealistic and potentially misleading. One community member, an Air Force activity, learned of the acquisition from an IBM salesperson after contract award. The activity then canceled an ongoing procurement effort, which had progressed through solicitation and receipt of proposals, and used the DIA contract to obtain required equipment.

Type of contract. DIA's decision to require that the contract be used on a mandatory basis by the DODIIS community was not adequately justified. Since exact delivery times and quantities were unknown at the time of contract award, the flexibility provided through the use of an indefinite-delivery type contract had merit. However, since contract MDA908-88-D-9277 was designated as a "requirements" contract, all community members were obligated to order from the contract if their needs could be so met. Because requirements-type contracts are binding, the needs of the user community should be thoroughly surveyed and documented before formulating the statement of work.

The contract files contained no indication that the community's users were surveyed by DIA to help define deliverable items or other contractual conditions. FSTC was the only community member that gave DIA information used in formulating contractual requirements. Although FSTC queried three other community members and considered their projected needs in developing estimated quantities of deliverables, the contract's core requirements were based on FSTC's needs. Because DIA did not perform an analysis of the DODIIS community's needs, the use of a requirements-type contract was inappropriate.

Life-cycle costs. The solicitation did not require that cost proposals be in a format conducive to evaluating life-cycle costs. Since 1978, it has been DoD policy that ADP systems be acquired through the application of life-cycle management concepts and principles. Life-cycle management is a control process that bases all expenditure decisions on total anticipated costs and benefits of an asset over its life. Therefore, definition of item costs throughout the contract's life is an inherent requirement in determining life-cycle costs. Because ADP equipment prices normally decline rapidly, most solicitations that are expected to result in a multiyear contract require that item pricing be proposed for each year of the contract's term. The DIA solicited proposals for a 5-year, firm fixed-price contract, but the solicitation did not require yearly item pricing. Therefore, DIA did not have a firm basis for evaluating life-cycle costs of proposals. Additionally, since there was no obligation to periodically reduce prices, DIA had little assurance that contractors did not propose prices that were artificially low with the intent of recovering initial losses in future years.

Oversight. Contract expenditures have exceeded established thresholds for DoD review and oversight. DIA managers did not inform OSD when contract expenditures exceeded \$25 million a year, because the 1987 policy memorandum requiring such action was not specifically addressed to DIA. OSD officials attributed this omission to either administrative oversight or the belief that DIA had no qualifying contracts.

Subsequent improvements. During our audit, VACA officials developed and implemented policy and procedures that should result in correcting most of the problems discussed. Specifically, the need for following established Federal, DoD, and DIA planning requirements was emphasized. The use of the contract was limited to FSTC and other AIA activities for which the contract was originally developed. Additionally, VACA required that all significant contract decisions and actions, especially those related to contract pricing provisions, be fully documented and that contract audit trails be properly maintained.

On August 14, 1991, the Assistant Secretary of Defense (Command, Control, Communications and Intelligence) issued a draft revision of OSD oversight policies for requirements contracts. The new policies require that DIA develop a plan for effectively managing and controlling costly ADP acquisitions and submit status reports to OSD twice a year. VACA officials have already started work to meet these new oversight requirements.

We believe that DIA contracting officials have aggressively developed workable remedies. However, DIA can further benefit by implementing the following recommendations.

RECOMMENDATIONS FOR CORRECTIVE ACTION

We recommend that the Director, Defense Intelligence Agency, direct the Virginia Contracting Activity to:

1. Revise the Defense Intelligence Agency Acquisition Manual to indicate the considerations and requirements in planning acquisitions totaling more than \$15 million or at least \$5 million in any fiscal year.
2. Develop and document procedures to ensure that future requirements-type contracts are based on and developed from well-defined needs of the user community.
3. Require that proposals provide and that contract award is based on total life-cycle acquisition costs of automated data processing resources. Deviations from related DoD life-cycle policies must be thoroughly documented and approved by the Director of the Virginia Contracting Activity.

MANAGEMENT COMMENTS

The Director, Defense Intelligence Agency, concurred with the finding and recommendations and provided fully responsive action plans. The full text of management's comments is in Part IV of the report.

B. SOLICITATION AND AWARD

The technical specifications in the DIA solicitation were unreasonably restrictive and unduly biased toward IBM. The CICA and the FAR emphasize that Federal agencies design specifications that provide for competition to the fullest practicable extent. However, DIA contracting personnel did not obtain maximum competition during the procurement process. As a result, neither adequate competition nor an assurance of obtaining the lowest overall prices were achieved during the procurement process.

DISCUSSION OF DETAILS

Background. In accordance with provisions in the CICA, the Government's procurement goal is the use of fully competitive procedures that allow all responsible sources to submit offers. To help achieve this goal, the FAR and the DFARS require that Federal agencies develop and use technical specifications and descriptions that promote competition. Agencies should also avoid restrictive features that limit acceptable offers to one or a few offerors' products.

The solicitation's technical specifications were to meet the operational requirements of the FSTC. As is common practice, the requiring activity, in this case FSTC, developed the technical specifications and evaluation criteria that were incorporated into the solicitation. The DIA contracting office, VACA, issued the solicitation. As the procuring contracting office, VACA was ultimately responsible for all associated decisions and actions made during the procurement process.

On October 16, 1987, VACA solicited proposals for IBM-compatible computers and peripheral devices. IBM-compatible equipment operates on IBM's software standards and works compatibly with IBM computer system components. During the solicitation process, in addition to IBM, two other manufacturers produced IBM-compatible mainframes, and several other manufacturers and dealers provided IBM-compatible peripheral equipment. VACA selectively issued the solicitation to five vendors. Three of the vendors originally solicited and two other vendors expressed interest in the solicitation, but only IBM submitted a proposal.

Solicitation requirements. The DIA solicitation was overly restrictive and unduly biased toward IBM. FAR part 10 requires that specifications be designed to maximize competition. Additionally, the specifications should not be written so as to specify a product, or a particular feature of a product, peculiar to one manufacturer. Although IBM-compatibility was justified, we believe the solicitation's mandatory technical specifications improperly described requirements in terms of an IBM-designed solution. Additionally, the solicitation's evaluated optional

features and associated monetary assessments overly favored IBM. We also believe DIA's contract award methodology attributed too much weight to technical considerations.

Mandatory technical specifications. The solicitation's mandatory technical specifications described requirements in terms of an IBM architecture. Mandatory specifications are those contractual conditions and technical specifications that the Government establishes as being essential to meet its minimum needs. These mandatory specifications must be met before an offer can be considered acceptable.

The DIA solicitation described requirements for the Central Processing Units (CPUs), including a requirement for memory and upgrades to memory. The requirement reflected IBM's approach in providing for additional memory. The solicitation also required a Vector Array Processor capability. Again, the wording closely paralleled the design used by IBM in providing such capability. Although VACA indicated that alternative solutions would be evaluated, it did not state that such proposals, even if proven to meet functional requirements, would be technically acceptable. We believe the mandatory specifications did not adequately allow for different technical or engineering approaches to be proposed.

Evaluated optional features. The solicitation's evaluated optional features and associated monetary assessments unduly favored IBM. Evaluated optional features are technical factors that are desired but do not have to be met for a proposal to be acceptable. When evaluated optional features are used, their value to the Government must be assessed for each feature. In this case, the evaluated optional features were primarily designed to assign a value to estimated costs that FSTC would potentially incur if IBM did not win the contract. The solicitation required that proposals cite a cost for providing the optional features, or a specified cost assessment would be added to the vendor's cost proposal. The following examples illustrate why we believe some cost assessments were unfair.

- A \$99,395 cost assessment was applied to offerors who could emulate certain IBM software within 6 months after IBM's first delivery of the feature. An assessment of \$397,581 would be levied if the offeror had no plan for emulating the IBM software changes. Because only IBM possessed the proprietary IBM software, all other IBM-compatible vendors had to emulate it and subsequently would have had an assessment of at least \$99,395 added to their proposal. Although the FSTC may have had a valid concern as to whether a non-IBM vendor had a plan to emulate IBM software, we believe waiting 6 months for the emulation of a new IBM feature is

not a serious inconvenience or worth penalizing non-IBM proposals and inhibiting competition.

- A cost assessment of \$778,568 would be levied if the offeror proposed a Vector Array Processor that did not operate under certain IBM operating systems. At the time of the procurement, only IBM's vector processor ran under the IBM operating systems. Subsequently, the IBM-compatible vendors either had to accept the assessment or offer an IBM vector processor. No cost adjustment was made available reflecting the potential benefits of non-IBM vector processors.

Award methodology. DIA's method of evaluating proposals placed too much weight on technical provisions. To determine the relative value of a proposal, DIA considered technical and cost aspects on a basis of 60 and 40 percent, respectively. We believe that such an approach is unwarranted for procuring products that are essentially off-the-shelf and commercially available and that have well-known operational characteristics. Technical considerations are typically given more weight when requirements are stated in a purely functional manner and when proposed solutions are primarily designed and created by the potential contractors. For DIA's solicitation, the requirements were quite specific in detail concerning the equipment needed. Accordingly, we believe technical considerations should have been valued at no more than 50 percent. Further, because the stated requirements reflected an IBM design approach, the potential was created for excessive subjectivity during the technical evaluations.

DIA received complaints from four of the five interested vendors concerning the restrictive nature of the solicitation's requirements, including those discussed above. However, primarily based on FSTC advice, the solicitation was not significantly adjusted. We believe contracting officials relied too heavily on FSTC and did not take adequate steps to obtain impartial opinions. DIA may have been better served by obtaining independent opinions or by releasing the solicitation in draft form for comment before its official release.

Other factors that restricted competition. DIA did not encourage competition to the maximum extent practicable in other areas. Contracting officials obtained limited solicitation review, did not question the justification for limited competition, and did not publicly seek related proposals.

Solicitation review. The DIA solicitation was not released to industry or an independent party for review before its official release. Issuing draft solicitations to industry or independent parties for review is not required by procurement

regulations; however, a review by industry may give the procuring agency a better idea of the number and capability of potential vendors and available technology. An independent review can assist the contracting officer in obtaining unbiased opinions from technical experts on potential restrictiveness and favoritism in the solicitation. By releasing the solicitation for comment before issuing it to industry or independent parties, the procuring agency can better determine whether the specifications are clearly written or overly restrictive.

DFARS 70.324 lists organizations from which DoD contracting officers can obtain help and advice during ADP procurements. During the audit, we requested assistance from two of those organizations; the U.S. Army Information Systems Selection and Acquisition Agency and the Air Force Computer Acquisition Center. They reviewed various aspects of the acquisition and provided independent opinions, information, and advice that we considered in performing our audit. Had DIA contacted those organizations during the acquisition, many of the problems discussed in this report may have been avoided.

Justification for limited competition. DIA procurement officials did not adequately question the justification for using other than full and open competition. The primary reason cited for limited competition was that only a few vendors could meet the solicitation's requirements for IBM compatibility. FSTC originated the justification, and it was certified as accurate and approved by DIA procurement officials.

We do not believe the justification's main premise was valid. We recognize that the number of manufacturers of IBM-compatible equipment was limited, but numerous system integration vendors might have been interested in submitting a proposal. A system integrator is a company that normally does not manufacture the equipment, but designs and often proposes integrated computer systems to meet Government requirements. For example, in a similar procurement conducted by the Air Force Computer Acquisition Center, the solicitation was provided to 114 vendors. In our opinion, 114 potential vendors do not constitute a limited number of sources. Additionally, we found no indication that the justification was questioned at any level within DIA. We believe DIA officials could have more effectively met their procurement responsibilities by aggressively challenging the justification for limited competition.

Public synopsis. The opportunity for enhanced competition was lost because DIA did not publicly synopsize the solicitation. FAR part 5 requires that proposed contract actions in excess of \$10,000 be synopsized in the Commerce Business Daily. The primary purpose for the requirement is to improve access to acquisition information and to heighten competition by publicizing contracting opportunities. In 1984, DIA determined

that the continuous publication of unclassified contract actions posed a threat to national security. Based primarily on that study, DIA decided that the solicitation could not be synopsized in a manner to preclude disclosure of DIA needs and that such disclosure would compromise national security.

Considering the circumstances of the procurement, we questioned the DIA decision not to synopsize. FAR 5.202(a)(1) permits proposed classified contract actions to be synopsized, even though access to classified matter might be necessary to submit a proposal or perform the contract. However, most information related to this acquisition was not classified, including the solicitation and resultant contract. At least two companies obtained related information under the Freedom of Information Act. Also, in a letter to a potential competing vendor, the DIA contracting officer stated, "Any vendor desiring a copy of the solicitation could have obtained one...." Competition was unreasonably inhibited because DIA did not synopsize requirements.

Potential effects of limited competition. We believe pricing for the same or comparable equipment in the contract could be markedly improved. Throughout the contract's life, IBM has provided item pricing equal to or less than prices readily available to other Government agencies or its best public-sector customers. Under those conditions, the FAR indicates that such prices can be considered fair and reasonable. However, most Government contracting organizations are aware that ADP equipment prices well below "list" are often available. Substantial discounts from published price lists have not only become common, but are expected for similar ADP equipment obtained through fully competitive contracting procedures.

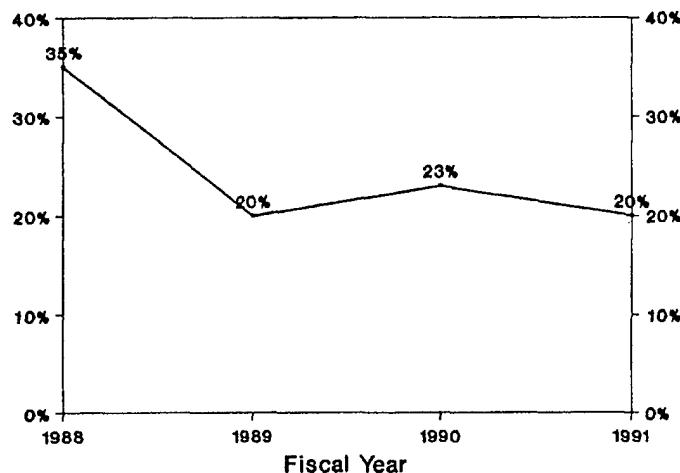
To assess the potential effects of DIA actions that limited competition, we performed two price comparisons. We compared DIA contract prices to those for items available through the General Services Administration's (GSA) ADP Schedule contract with IBM. Equipment available through IBM's GSA ADP Schedule contracts generally cost less than \$300,000. For higher priced items on the DIA contract, we compared DIA prices with those of other DoD contracts providing IBM or compatible processors and peripheral devices that were awarded using full and open competition.

GSA ADP Schedule contracts. The average GSA ADP Schedule discount has dropped substantially since contract MDA908-88-D-9277 was awarded. To provide Government agencies with a simplified process for obtaining relatively inexpensive ADP equipment, GSA annually negotiates Schedule contracts with various ADP vendors, including IBM. Since the DIA contract prices proposed by IBM have always been equal to or discounted from GSA Schedule prices, DIA has consistently determined that

the prices proposed represented a good value. To better judge the value received by DIA, we analyzed the DIA contract prices during each fiscal year of the contract.

For those items also available through the IBM's GSA Schedule contract, we found that DIA obtained an initial average discount of 35 percent from GSA Schedule prices. However, as illustrated in the following chart, this discount rate was not maintained during subsequent periods.

Average Discount from GSA Schedule



The primary reason for decreasing price discounts is that DIA did not provide a contractual mechanism to maintain original discounts. Without a good price indexing methodology, an agency has little hope of retaining attractive prices, and contractors have little incentive to provide them.

Similar DoD contracts. DIA prices for more expensive ADP equipment could also be improved. We identified other DoD contracts that were awarded using fully competitive procedures and that provided IBM or compatible processors and peripheral devices. We then compared DIA contract prices to those available through the other DoD contracts. We found strong indications that full competition resulted in lower prices. The following examples illustrate the pricing difference between the DIA contract and two similar contracts.

- One of the DoD contracts we examined was directly related to the DIA contract. In April 1989, the Marine Corps placed an order under the DIA contract for two mainframes and related peripheral devices. However, the Department of the Navy determined that the Marine Corps order was improperly placed, and DIA

canceled the order. Based on the same functional requirements, the Marine Corps competitively awarded a contract for IBM-compatible equipment. In early FY 1991, the Marine Corps used its contract to acquire equipment for the two activities that were to receive the equipment originally ordered under the DIA contract.

The chart below compares the FY 1991 prices obtained by the Marine Corps through full and open competition with DIA contract prices for comparable processing systems.

Price Comparison

	<u>Marine Corps Contract Prices</u>	<u>DIA Contract Prices</u>
System No. 1	\$1,031,802	\$2,269,350
System No. 2	\$2,024,598	\$4,065,880
System No. 3	\$2,493,590	\$5,675,589

Some of the difference in the above prices is attributable to the Marine Corps equipment being used but refurbished and certified to perform as new. In fulfilling its processing requirements for IBM or compatible processors, the Marine Corps paid less than half as much as DIA by using full and open competition.

- An Army contract, awarded on a fully competitive basis in 1990, provides an IBM processing system that is also available through the DIA contract. Both contracts specify new equipment. The differences in pricing for FYs 1990 and 1991 follow.

Contract Price Differences

	<u>FY 1990 Prices</u>	<u>FY 1991 Prices</u>
DIA Contract	\$4,447,108	\$4,409,796
Army Contract	<u>\$3,447,074</u>	<u>\$2,803,702</u>
Difference	<u>\$1,000,034</u>	<u>\$1,606,094</u>

Since no two Federal contracts are alike, price comparisons alone are not necessarily conclusive. However, because the other DoD contracts we identified were awarded based on full and open

competition and provided comparable or identical equipment, the price comparisons provide a good indicator of the financial advantage gained from fully competitive procurements.

The benefits of competition go beyond possible price advantages. The competitive process also provides a means for determining what resources are available to meet a particular Government need. Competition can also produce improved ideas or quality of service in an attempt to obtain Government contracts. In addition, the chance of winning a Government contract, or the threat of losing it, provides a key incentive for greater contractor efficiency and effectiveness.

RECOMMENDATIONS FOR CORRECTIVE ACTION

We recommend that the Director, Defense Intelligence Agency, direct the Virginia Contracting Activity to:

1. Develop and implement procedures to ensure that future solicitations for unclassified automated data processing requirements are not unduly restrictive or biased. The procedures should require DIA to obtain and appropriately act on comments on draft solicitations from:

a. Industry to help determine whether the solicitations are clearly written or unduly restrictive.

b. A contracting organization experienced in automated data processing procurements to help guard against overly restrictive or biased requirements, if the release of draft solicitations to industry is not appropriate.

2. Emphasize the use of full and open competition by establishing procedures and criteria to:

a. Review future procurements to determine their availability for synopses in the Commerce Business Daily.

b. Review future justifications for other than full and open competition to ensure their validity.

3. Develop and implement guidance and procedures to ensure that future multiyear contracts for automated data processing resources contain a pricing index or other mechanism to maintain any pricing advantages that are initially obtained.

MANAGEMENT COMMENTS

The Director, Defense Intelligence Agency, concurred with the finding and recommendations and provided fully responsive action plans. The Director also commented that the draft report inferred that the solicitation's requirement for

IBM-compatibility was not appropriate. Such inference was not intended, and we have revised the final report accordingly. The full text of management's comments is in Part IV of the report.

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C. CONTRACT MANAGEMENT

Modifications on contract MDA908-88-D9277 and other contracting actions have been made that were outside the contract's original scope and intent. Also, the contract was not effectively managed after award. This condition occurred because contracting officers did not adequately evaluate modification proposals, improperly ordered services through the contract, and did not emphasize contract administration. Although DIA improved the contract's management in 1990, prior management actions and decisions were so improper and deficient that they made the contract invalid.

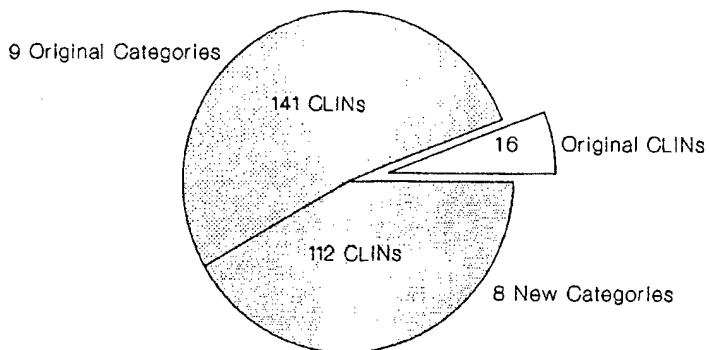
DISCUSSION OF DETAILS

Background. DIA awarded contract MDA908-88-D-9277 on July 27, 1988, for CPUs, processor and main memory upgrades, secondary storage peripherals, and miscellaneous services for the DODIIS community. The contract also provided ADP equipment maintenance to the FSTC for both existing and new equipment. The estimated value of the contract at the time of award was \$19 million. Since award, the contract had been modified 13 times between November 1988 and February 1991. The value of orders placed through May 1991 is about \$64 million.

Contract scope. DIA modified and placed orders against the contract without regard for its original scope and purpose. Actions considered to exceed the scope of a contract are not specifically defined and are largely left up to the judgment of the contracting officer. In our opinion, contracting actions meant to satisfy new requirements identified after a contract has been awarded are not within the scope of the contract. New requirements should be satisfied through competitive procedures or obtained through another appropriate contractual vehicle. DIA exceeded the scope of the contract by adding equipment in new categories and by issuing delivery orders for maintenance for other than FSTC and for maintenance not specified on the contract.

Equipment. Before June 1990, DIA contracting officers routinely incorporated IBM proposals into contract modifications. Three contract modifications added types of equipment that were not originally solicited, proposed, or awarded in the basic contract. In November 1988, VACA executed the first contract modification, which classified the original 16 contract line item numbers (CLINs) into 9 equipment categories and established 2 new categories. By June 1990, a total of eight new equipment categories had been added to the contract. By that time, the total number of CLINs had grown to 269. The following chart illustrates equipment CLIN growth in the original and new categories.

CLIN Growth before June 1990



In April 1990, IBM proposed an additional 308 items be added to the contract, including 142 CLINs in the 8 new equipment categories. While reviewing this proposal, DIA officials recognized management control deficiencies and internally reviewed the contract's prior usage and management. In June 1990, contracting officials concluded that the legality of prior actions and decisions related to the contract was questionable and, if continued, could result in the early termination of the contract. DIA officials implemented improved control procedures for modifying the contract.

We believe however that the contract had been excessively altered, and VACA should have invalidated the contract in June 1990. The addition of new types of equipment not originally solicited and contracted for was improper because DODIIS activities were enabled to fill requirements that were beyond the contract's original intent. One of the new equipment categories improperly added to the contract was for personal computers and related equipment. By June 1990, DIA had processed orders from six activities for personal computers costing more than \$3 million.

Maintenance. Contractual limitations were also exceeded by DIA in obtaining maintenance services for ADP equipment. DIA improperly ordered maintenance for agencies other than FSTC and used the contract to order maintenance services not specified in the contract. Contractual provisions for ADP equipment maintenance were limited to FSTC use only and were not available to other members of the DODIIS community. VACA officials improperly allowed three activities other than FSTC to order maintenance services listed in the contract that were valued at \$642,238. Also, VACA contracting officials improperly used the contract to obtain maintenance that was not available as

a CLIN. Three DODIIS activities received equipment maintenance services, worth \$323,768, that were not provided for in the contract.

Other scope factors. We identified other indicators that the contract's scope had been exceeded. The contract has far exceeded its original estimates for both quantities of equipment required and total contract value.

FAR 16.503 requires contracting officers to state a realistic estimated total quantity in the solicitation and resulting contract, based on the most up-to-date information available. As discussed in Finding A, DIA issued the solicitation based on the estimated quantities of four activities, even though the stated scope was for the DODIIS community. The first modification, executed 4 months after contract award, deleted the estimated quantity provision of the contract. We compared the original estimated quantities of equipment with quantities of comparable equipment actually ordered and found that the estimates were often far exceeded. For instance, it was estimated that four mainframes were required, but as of May 1991, eight had been bought.

We also analyzed the actual and estimated total value of the contract. As of May 1991, DIA had issued delivery orders valued in excess of \$64 million. This amount is more than twice the amount estimated at the time the solicitation was issued (about \$30 million) and more than three times the amount estimated (about \$19 million) at contract award.

Other administrative considerations. DIA did not effectively monitor and administer the contract after award. The contracting officer was required to determine whether prices proposed for contract modifications were fair and reasonable and whether the proposed additions were based on user requirements. The contracting officer was also responsible for ensuring that delivery orders affected by price decreases were modified and that any remaining money was returned to the requesting activity. DIA did not ensure that contract modifications were reasonably priced, represented actual requirements, and were processed in a timely manner.

Pricing. DIA had not requested lower prices for equipment on the contract or proposed to be added to the contract. The contracting officer is responsible for final pricing decisions, and FAR 15.805-2 requires contracting officers to perform price analyses to ensure that the overall price offered is fair and reasonable. IBM consistently proposed prices equal to or discounted from those in its GSA ADP Schedule contract. VACA officials therefore deemed the prices offered to be fair and reasonable. However, DIA did not take any additional

steps to ensure that the prices offered were consistent with open-market pricing or comparable to those offered to other DoD agencies.

Requirements. Documentation was not available to show that the first eight contract modifications were based on actual requirements. In analyzing the contract's history, we determined that 123 of 253 items added to the contract before June 1990 had never been ordered. We believe that instead of meeting defined, valid requirements, those items were added largely because IBM proposals were routinely incorporated into the contract. This practice effectively turned the contract into an IBM catalog, or shopping list.

Processing. DIA did not effectively monitor the contract for price decreases or initiate contract and delivery order modifications in a timely manner. Monitoring price decreases is important because they may affect previously issued delivery orders. Unexpended dollar balances are deobligated through delivery order modifications. To obtain time-sensitive prices, contract modifications have to be processed quickly. The following examples show that contract management objectives were not met.

- VACA officials executed a contract modification in December 1989 that reduced some prices for equipment to be installed during FY 1990. However, DIA did not review delivery orders issued in FY 1989 to determine whether they were affected by the contract price decreases. For example, DIA did not modify Delivery Order 0027 to incorporate price decreases totaling \$364,710. If VACA officials had modified the delivery order in a timely manner, an over-billing by IBM for \$252,150 would not have been paid, and an unexpended balance of \$112,560 would not have existed as of August 1991.
- FSTC had a documented requirement for a communications controller upgrade that was not added to the contract in a timely manner. For a limited time, IBM would have accepted FSTC's existing equipment as a trade-in valued at \$35,000. However, DIA did not modify the contract until the trade-in offer had expired. As a result, FSTC had to purchase the equipment at the contract price of over \$100,000, which in this case was the GSA ADP Schedule price with no discount. Quicker action by contracting officials may have saved \$35,000.

Technical assistance. Contracting Officer's Technical Representatives (COTRs) assigned to the contract have provided

questionable advice to DIA contracting officials. In our opinion, COTRs improperly advised contracting officers to modify the contract. COTRs were initially assigned to the contract from FSTC and later from DIA's Directorate for Information Systems. COTRs from both organizations advised the contracting officer to add equipment outside the scope of the contract. Although it is the COTRs' function to provide technical assistance and advice, we believe the COTRs improperly focused on the technical aspects of equipment proposed by IBM and did not adequately consider limitations of the contract's scope and intent. Additionally, both organizations were large users of the DIA contract, and the COTRs may have had parochial interests to protect. Consequently, it may be unreasonable for VACA to expect wholly impartial advice. Because DIA contracting staff have limited ADP technical expertise, DIA contracting officials may be better served if they obtain technical advice from wholly independent sources.

Adherence to CICA. We did not identify any delivery orders that violated the legal provisions of CICA. Although DIA awarded the contract through less than full and open competitive procedures, DIA obtained the related justification and approval required by CICA. Because the contract was awarded to serve only the DODIIS community, any member organization could validly use the contract to acquire equipment. However, the circumstances under which three delivery orders were placed indicated that the intent of CICA was avoided.

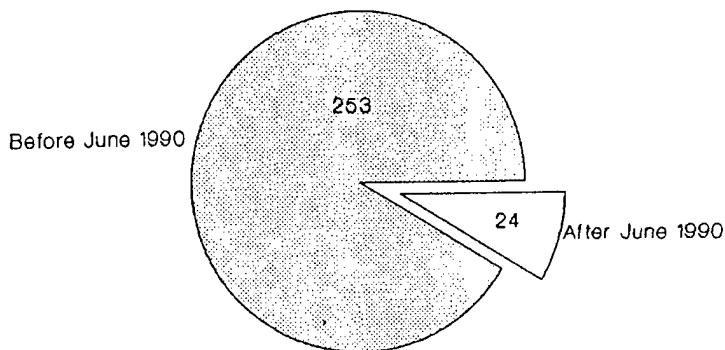
One delivery order issued under the contract was for a nonmember of the DODIIS community. Citing the Economy Act, the Marine Corps submitted a request for computers and other items available on the contract. The Economy Act permits agencies to acquire goods and services through another agency's contract under certain conditions. VACA officials accepted the request and issued the delivery order. However, believing errors had occurred in DIA's contracting process, the Office of the Secretary of the Navy directed the Marine Corps to terminate the delivery order for the convenience of the Government. The Navy believed that the Marine Corps should independently justify ordering under the DIA contract, since it was awarded using other than full and open competition. The Marine Corps could not support a justification for other than full and open competition, canceled the order, and filled its requirements using full and open competition (see Finding B).

Two DODIIS community members, an Air Force activity and the Defense Communications Agency (now the Defense Information Systems Agency), each seeking to obtain ADP equipment through competitive procedures, publicized their requirements in the Commerce Business Daily and issued solicitations. The Air Force activity withdrew its solicitation after learning of the DIA contract, and the Defense Communications Agency withdrew its solicitation after receiving complaints from potential vendors.

They then filled requirements by using the DIA contract, which was awarded using less than full and open competition. We believe these actions were legally permitted, but we also believe that the intent of CICA--that procurements be conducted by using full and open competitive procedures to the fullest practicable extent--was circumvented.

Corrective actions. DIA contracting officials have recognized and adequately addressed most of the problems discussed, both before and during our audit. For example, the new VACA Director initiated procedures in June 1990 to more closely monitor and manage the contract. Procedures for evaluating IBM proposals and justifying the addition of equipment CLINs to the contract were significantly improved. The effect of those improved procedures is shown in the chart below.

Equipment CLINs Added to the Contract



VACA officials also have been receptive to discussing the problems identified during our audit, and in June and September 1991, issued policy changes to remedy questionable procedures and actions relative to contract MDA908-88-D-9277. In June 1991, contracting officials suspended all contract activity, pending more definitive audit results. In September 1991, contracting officials determined that the contract had been improperly used and issued policy that:

- limited maintenance services to FSTC and prohibited ordering maintenance not specifically included in the contract;
- deleted CLINs for types of equipment not in the basic contract;
- required that the price reasonableness of CLINs added in the future be fully explained and documented;

- required that all significant contract decisions and actions be fully documented and that audit trails be maintained; and

- clarified the relationship and the proper usage of CICA and the Economy Act.

DIA has generally taken appropriate action in resolving problems. However, we believe certain contract management actions of the past were ill-advised and have irreparably damaged the contract.

RECOMMENDATIONS FOR CORRECTIVE ACTION

We recommend that the Director, Defense Intelligence Agency, direct the Virginia Contracting Activity to:

1. Terminate contract MDA908-88-D-9277 or place no more delivery orders against it.
2. Develop and implement procedures to obtain wholly independent automated data processing technical assistance and advice needed to appropriately manage similar contracts.

MANAGEMENT COMMENTS

The Director, Defense Intelligence Agency, concurred with the finding and recommendations. In regard to Recommendation C.1., DIA has determined that, as of March 16, 1992, no more orders would be placed against the contract. To implement Recommendation C.2., VACA and DIA's Directorate for Information Services will jointly create procedures to establish an independent board of technical experts to assist and advise contracting officers.

The Director also commented that the draft report's discussion of adherence to CICA sought to create an inappropriate linkage between the Economy Act and CICA. He stated that the separation of the Economy Act and CICA was clearly illustrated in a 1988 legal ruling that directly related to the DIA contract and the Air Force activity referenced in our discussion. Because the court concluded that the Air Force activity's cancellation of its Request for Proposals and its subsequent order under the DIA contract was found to be in full compliance with both CICA and the Economy Act, the Director asked that we delete that portion of the discussion from the final report. He also requested that we revise the "Technical Assistance" discussion in the draft report to more clearly reflect that the technical advice provided to contracting officials, while questionable, was not made with ill-intent. The full text of management's comments is in Part IV of the report.

AUDIT RESPONSE TO MANAGEMENT COMMENTS

We consider DIA action taken to implement Recommendation C.1. to be fully responsive.

Although the Director concurred with Recommendation C.2., his plan for implementation was unclear. Specifically, we do not understand the role of the Directorate for Information Services in VACA obtaining wholly independent technical assistance and advice. For reasons discussed in the report, we believe that continued VACA reliance on technical advice obtained from the Directorate for Information Services, or any other user of a VACA-managed contract, does not adequately consider the potential for conflict of interest. We believe the best solution would be to augment the VACA staff with the requisite technical expertise; however, we also recognize that truly independent advice can be obtained from other sources. We request that the Director clarify his position and provide additional comments on Recommendation C.2. in response to the final report.

In regard to the Director's other comments, we did not intend to portray an inappropriate linkage between CICA and the Economy Act. Our intent was to point out that those two laws are not always complimentary and that the provisions of the Economy Act may sometimes be used to the detriment of the basic purpose of CICA. We were aware of the court ruling involving the Air Force activity. We are also aware that, as an extreme example, one activity can legally use the Economy Act to order from another activity's contract that was awarded on a sole-source basis. We continue to believe such an action, and the circumstances surrounding the three delivery orders discussed in the final report, is contrary to the basic intent of CICA. However, we have revised the final report discussion to eliminate any undue linkage. We also revised our final report to reflect that the advice provided by the COTRs may not have been of an intentionally improper nature.

STATUS OF RECOMMENDATIONS

<u>Number</u>	<u>Addressee</u>	<u>Response Should Cover:</u>	
		<u>Proposed Action</u>	<u>Completion Date</u>
C.2.	Director, Defense Intelligence Agency	X	X

PART III - ADDITIONAL INFORMATION

APPENDIX A - Summary of Potential Benefits Resulting from Audit

APPENDIX B - Activities Visited or Contacted

APPENDIX C - Report Distribution

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APPENDIX A: SUMMARY OF POTENTIAL BENEFITS RESULTING FROM AUDIT

Recommendation Reference	Description of Benefit	Amount and/or Type of Benefit
A.1.	Program Results. Improved procurement planning.	Nonmonetary.
A.2.	Program Results. Better defined requirements of DODIIS community.	Nonmonetary.
A.3.	Economy and Efficiency. Defined acquisition costs throughout the life of the contract.	Nonmonetary.
B.1.	Internal control. Reduced bias and restrictiveness in future solicitations.	Nonmonetary.
B.2.	Program Results. Enhanced competition in future procurements.	Undeterminable monetary benefit. Savings cannot be determined until fully competitive procurements are routinely accomplished.
B.3.	Economy and Efficiency. More uniform price attractiveness throughout life of contract.	Nonmonetary.
C.1.	Program Results. Elimination of an invalid contract.	Nonmonetary.
C.2.	Internal control. Improved objectivity of technical opinions.	Nonmonetary.

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APPENDIX B: ACTIVITIES VISITED OR CONTACTED

Office of the Secretary of Defense

Assistant Secretary of Defense (Command, Control,
Communications and Intelligence), Washington, DC

Department of the Army

Army Intelligence Agency, Falls Church, VA
Foreign Science and Technology Center, Charlottesville, VA
Army Information Systems Selection and Acquisition Agency,
Alexandria, VA

Department of the Navy

Information Technology Acquisition Center, Office of the Assistant
Secretary of the Navy (Research, Development and Acquisition),
Washington, DC
Headquarters, Marine Corps, Washington, DC

Department of the Air Force

Air Force Computer Acquisition Center, Electronic Systems Division,
Hanscom Air Force Base, MA

Defense Agencies

Defense Finance and Accounting Service, Philadelphia, PA
Defense Intelligence Agency, Washington, DC

Non-DoD Federal Organizations

General Services Administration, Washington, DC

Non-Government Activities

Amdahl Corporation
Federal Data Corporation
International Business Machines Corporation
Storage Technology Corporation
Vion Corporation

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APPENDIX C: REPORT DISTRIBUTION

Office of the Secretary of Defense

Assistant Secretary of Defense (Command, Control,
Communications and Intelligence)

Assistant Secretary of Defense (Public Affairs)

Director of Defense Procurement

Department of the Army

Secretary of the Army
Auditor General, U.S. Army Audit Agency

Department of the Navy

Secretary of the Navy
Commandant, U.S. Marine Corps
Auditor General, Naval Audit Service

Department of the Air Force

Secretary of the Air Force
Air Force Audit Agency

Defense Agencies

Director, Defense Intelligence Agency

Other Defense Activities

Inspector General, National Security Agency

Non-DoD Activities

Office of Management and Budget
U.S. General Accounting Office
NSAID Technical Information Center

Congressional Committees:

Senate Subcommittee on Defense, Committee on Appropriations

Senate Committee on Armed Services

Senate Committee on Governmental Affairs

Ranking Minority Member, Senate Committee on Armed Services

Chairman, Senate Select Committee on Intelligence

House Committee on Appropriations

House Subcommittee on Defense, Committee on Appropriations

Ranking Minority Member, House Committee on Appropriations

House Committee on Armed Services

House Subcommittee on Government Operations

House Subcommittee on Legislation and National Security,

Committee on Government Operations

Chairman, House Permanent Select Committee on Intelligence

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PART IV - MANAGEMENT COMMENTS

Defense Intelligence Agency Comments

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Defense Intelligence Agency Comments



DEFENSE INTELLIGENCE AGENCY

WASHINGTON D C 20330



17 MAR 1992

U-0861/RSQ-1

MEMORANDUM FOR THE INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

SUBJECT: Draft Audit Report on the Acquisition of Automated Data Processing Equipment by the Defense Intelligence Agency (Project IFE-5013)

Reference: Director, Financial Management Directorate, DoD IG memorandum, 17 January 1992, subject as above.

1. Enclosed are comments on the subject Draft Audit Report for your consideration in preparation of the final report. DIA concurs on all of the recommendations made and will implement the additional stated corrective actions.

2. The report reflects that our contracting office has already taken immediate corrective action on many issues to preclude recurrence of the types of situations identified. The Agency as a whole is pursuing aggressive planning initiatives that will result in better defined and timely acquisition actions.

3. The assistance of your staff in highlighting these problem areas is greatly appreciated. Together our objective is to award contracts that meet the requisite statutory and regulatory requirements, are in the best interest of the Government, and uphold the integrity of the procurement process.

James R. Clapper

1 Enclosure a/s

JAMES R. CLAPPER, JR.
Lieutenant General, USAF
Director

Defense Intelligence Agency Comments (continued)

Summary of DoD IG Issues and Recommendations

A. FINDINGS: Acquisition Planning and Oversight. Although contract MDA908-88-D-9277 was awarded to support the DoDIIS Community, the acquisition was not adequately coordinated within the DoDIIS Community, based on DoDIIS Community-wide requirements, or appropriately reviewed. Federal and DoD acquisition regulations stress the importance of coordinated planning and require the preparation of detailed acquisition plans, but no formal acquisition plan addressing the requirements of the DoDIIS community was developed. Additionally, the contract normally would have been subject to OSD oversight, but the then-applicable OSD oversight policy did not specifically include DIA. As a result, the acquisition did not comply with Federal or DoD regulations, the type of contract awarded was not justified, and the contract was not managed appropriately.

RECOMMENDATION #A1: Revise the Defense Intelligence Agency Acquisition Manual to indicate the considerations and requirements in planning acquisitions totaling more than \$15 million or at least \$5 million in any fiscal year.

Concur: Estimated Date for Completion of Planned Action: 30 April 1992

Summary: Concur with recommendation.

1. The Virginia Contracting Activity (VACA) has incorporated specific consideration and requirements as enumerated in Federal Acquisition Regulation (FAR) Part 7, subpart 7.1, subsections 7.105 and 7.106 and Defense Federal Acquisition Regulation Supplement (DFARS), Part 207, subpart 207.1, sections 207.105 and 207.106 in the updated version of the DIA Acquisition Manual to be released on or about 30 April 1992.

2. Reference APPENDIX A-BENEFITS: The above corrective action will result in nonmonetary benefits. The significant result will be improved planning.

Defense Intelligence Agency Comments (continued)

RECOMMENDATION #A2: Develop and document procedures to ensure that future requirements-type contracts are based on and developed from well-defined needs of the user community.

Concur: Estimated Date for Completion of Planned Action: 30 April 1992

Summary: Concur with recommendation.

1. Procedures will be developed and subsequently implemented by verifying the adequacy of definitive documentation prior to Advanced Acquisition Plan (AAP) approval and pre-award contract compliance review. The DIA updated version of the Acquisition Manual specifically requires supporting documentation from the user community for all Indefinite Delivery type contracts. Also, VACA Internal Instruction 006-89, "Preparation and Maintenance of Contract Files," will be revised to ensure the required documentation is present in the contract file.

2. Reference APPENDIX A-BENEFITS: The benefits from the above corrective action are nonmonetary. The significant result will be better defined requirements from the user community and documentation for determination of proposed contract type.

Defense Intelligence Agency Comments (continued)

RECOMMENDATION #A3: Require that proposals provide and that contract award is based on total life-cycle acquisition costs of automated data processing resources. Deviations from related DoD life-cycle policies must be thoroughly documented and approved by the Director of the Virginia Contracting Activity.

Concur: Estimated Date for Completion of Planned Action: 30 April 1992

Summary: Concur with recommendation.

1. The DIA updated version of the Acquisition Manual requires the application of life-cycle management concepts and principles and the submission of documentation as part of (a) AAPs (b) source selection evaluation plans and (c) independent Government cost estimates. This will apply to all Agency requirements to include automated data processing resources. As applicable, the proposals will provide for and contract award will be based on total life-cycle costs analysis. Any deviations from application of life-cycle policies shall be documented and approved by the Director of the Virginia Contracting Activity.

2. Reference APPENDIX A-BENEFITS: The benefit from this recommendation is nonmonetary. The significant result will be defined life-cycle costs throughout the life of the system.

Defense Intelligence Agency Comments (continued)

Final Report
Reference

B. FINDINGS: Solicitation and Award. The technical specifications in the DIA solicitation were unreasonably restrictive and unduly biased toward IBM. The CICA and the FAR emphasize that Federal agencies design specifications that provide for full and open competition. However, DIA contracting personnel did not obtain maximum competition during the procurement process. As a result, neither adequate competition nor an assurance of obtaining the lowest overall prices were achieved during the procurement process.

RECOMMENDATION #B1: Develop and implement procedures to ensure that future solicitations for unclassified automated data processing requirements are not unduly restrictive or biased. The procedures should require DIA to obtain and appropriately act on comments on draft solicitations from:

- a. Industry to help determine whether the solicitations are clearly written or unduly restrictive or,
- b. A contracting organization experienced in automated data processing procurements to help guard against overly restrictive or biased requirements, if the release of draft solicitations to industry is not appropriate.

Concur: Estimated Date for Completion of Planned Action: 30 Sep 92

Summary: The Procuring Activity Competition Advocate (PACA) for the Agency is responsible for and routinely challenges barriers to competition by questioning unnecessarily detailed specifications and restrictive statements of need.

VACA will develop and implement procedures in conjunction with the Directorate for Information Services to ensure that future solicitations for automated data processing requirements are not unduly restrictive or biased. The Agency is currently utilizing both industry comments and/or "third party" external reviews on more complex requirements.

Reference APPENDIX A-BENEFITS: The benefits from implementing the recommendations are nonmonetary. The significant result will be increased opportunities for competition and any resultant savings therefrom.

Page 9

COMMENT: Reference "Solicitation Requirements," page 16 of Draft Report.

The above recommended and corrective action is appropriate. However, for the specific FSTC requirement satisfied by the identified subject contract, appropriate documented rationale exists for restricting the requirement to an IBM-based solution.

Defense Intelligence Agency Comments (continued)

In particular, a General Services Administration (GSA) Federal Software Management Support Center study was conducted and found that the cost of a noncompatible system exceeded the cost of the proposed acquisition by \$6 million. DIA relied on this independent review in deciding how to satisfy the FSTC requirement.

Defense Intelligence Agency Comments (continued)

RECOMMENDATION #B2: Emphasize the use of full and open competition by establishing procedures and criteria to:

a. review future procurements to determine their availability for synopses in the Commerce Business Daily.

Concur: Estimated Data for Completion of Planned Action: 30 Apr 92

Summary: Concur with recommendation.

1. The updated version of the DIA Acquisition Manual to be released on or about 30 April 1992 requires detailed rationale from the requisitioner for any recommendation not to publicize a contract action. Currently, the Contracting Officer synopsizes all proposed procurement actions in accordance with regulation(s) unless a written determination for an exception to publicizing a proposed procurement is approved and placed in the respective contract file.

2. Reference APPENDIX A-BENEFITS: The above corrective action results in an undeterminable monetary benefit. Enhanced competition in future procurements should result in savings to the Government.

b. review future justifications for other than full and open competition to ensure their validity.

Concur: Completion date for corrective action already taken:
9 Nov 90 and continues

Summary: Prior to this subject audit, the current Director, Office for Procurement recognized a shortfall in preparation and documentation of Justification and Approvals for Other than Full and Open Competition. As a result, VACA issued a detailed "DIA Technical Writer's Guide to Preparing a J&A for Other Than Full and Open Procurement," dated 9 Nov 90. VACA continues to challenge all procurements proposed on a basis of other than full and open competition to ensure compliance with the Competition in Contracting Act.

Reference APPENDIX A-BENEFITS: The above recommendation results in an undeterminable monetary benefit. Enhanced competition in future procurements should result in savings to the Government.

Defense Intelligence Agency Comments (continued)

RECOMMENDATION #B3: Develop and implement guidance and procedures to ensure that future multi-year contracts for automated data processing resources contain a pricing index or other mechanism to maintain any pricing advantages that are initially obtained.

Concur: Estimated Date for Completion of Planned Action: 30 May
92

Summary: A VACA Instruction will be developed and implemented to provide formal guidance to the contracting staff to ensure that future solicitations and contracts for Automated Data Processing resources will address the application of a pricing index or other mechanism to maintain pricing advantages most favorable to the Government. This procedure has already been applied and is operating in several existing ADP contracts that cover performance for more than one year.

Reference APPENDIX A-BENEFITS: The benefit of the application of the above recommendation is nonmonetary. The significant result will be the establishment of most favored prices to the Government which will remain current with prices in the competitive market at time of delivery.

Defense Intelligence Agency Comments (continued)

Final Report Reference

C. FINDINGS: Contract Management. Modifications on Contract MDA908-88-D-9277 and other contracting actions have been made that were outside the contract's original scope and intent. Also, the contract was not effectively managed after award. This condition occurred because contracting officers did not adequately evaluate modification proposals, improperly ordered services through the contract, and did not emphasize contract administration. Although DIA improved the contract's management in 1990, prior management actions and decisions were so improper and deficient that they made the contract invalid.

RECOMMENDATION #C1: Terminate Contract MDA908-88-D-9277 or place no more delivery orders against it.

Concur: Completion Date for Corrective Action Taken: 16 Mar 92

Summary: The Contracting Officer has made a determination that effective 16 March 1992 no additional orders will be issued against subject contract. DIA concurs with DoD IG overall recommendation that further use of this contract is not in the best interest of the Government. This determination is based on the (1) fact that the contract does not include a pricing mechanism that will ensure that prices paid by the Government will stay fair and reasonable compared to current industry market trends and (2) modifications over the term of the contract have exceeded the original intent and value of the contract.

Reference APPENDIX A-BENEFITS: The above recommendation will result in a nonmonetary benefit. Although nonavailability of this contract may have a limited negative impact on FSTC, the overall benefit to the Government will be more effective contract management and reestablishment of credibility in the contract process.

Page 23

COMMENT: Reference "Adherence to CICA," pages 39 and 40 of the Draft Report.

The draft report contends, in part, that: "The Economy Act permits agencies to acquire goods and services through another agency's contract, if the contract was awarded in accordance with CICA." It also states later that "we believe these actions were legally permitted by CICA, but we also believe that the intent of CICA--that procurements be conducted by using full and open competitive procedures to the fullest practicable extent--was circumvented."

The above statements seek to create a linkage between the Economy Act and CICA wherein an Agency seeking acquisition support via another Agency's contract, must, in addition to satisfying the Economy Act, also satisfy CICA.

Defense Intelligence Agency Comments (continued)

The linkage is not appropriate and as such was addressed in the case of National Gateway Telecom, Inc. v. Aldridge, 701 F. Supp 1104, 1113 (D.N.J. 1988), December 9, 1988. This case specifically relates to the instant contract and the Air Force (ESC) order cited. The court found that:

"ESC did not itself award a contract and, therefore, the provisions of 10 U.S.C. Section 2304(f)(1) providing for justification and approval of the justification of the award of a contract are simply not applicable. ESC did not purport to and did not acquire the equipment pursuant to the provisions of 10 U.S.C. Section 2304(c). It acquired the equipment pursuant to the Economy Act, 31 U.S.C. Section 1535. That Act permits the head of an agency to place an order with another agency for goods or services upon meeting the conditions specified in the Act. Presumably, the other agency would have complied with all requirements relating to fully or limited competitive bids and, thus, such a procedure should not have an adverse effect upon the Government's ability to obtain goods and services at competitive prices."

Additionally the court went on to state:

"10 U.S.C. Section 2304(a)(1) specifically exempts from the full and open competition requirements of the Competition in Contracting Act not only acquisitions described in subsection (c) but also acquisitions 'expressly authorized by statute,' of which The Economy Act would be one. The precise wording of the exception is '[e]xcept as provided in subsections (b), (c), and (q) and except in the case of procurement procedures otherwise expressly authorized by statute....' Thus subsection (c) and other statutory authorizations are separate and distinct routes which an agency may pursue without compliance with the full and open competition requirement."

Finally, in part, Judge Dickerson R. DeBevoise, concludes:

"I conclude that there is nothing in the record to support this claim and that in fact the record establishes that ESC's cancellation of the RFP and its procurement under the Economy Act are in full compliance with applicable statutes and regulations."

The above issue of the separation between the Economy Act and CICA was later upheld by the General Accounting Office when the Comptroller General cited the National Gateway Telecom, Inc, case in resolving a protest made by the Liebert Corporation (B-232234.5) April 29, 1991. Request the above referenced section be stricken from the report.

Defense Intelligence Agency Comments (continued)

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RECOMMENDATION #C2: Develop and implement procedures to obtain wholly independent automated data processing technical assistance and advice needed to appropriately manage similar contracts.

Concur: Estimated Date for Completion of Planned Action: 30 Sep
92

Summary: In conjunction with the Directorate for Information Services (DS), VACA will develop and implement procedures to create a board of independent Government technical experts to assist and advise in the management of DIA managed community-wide Automated Data Processing requirement-type contracts. This action will also take into consideration the DIA implementation of the DoD Federal Information Processing (FIP) Resources Program.

Reference APPENDIX A-BENEFITS: The above corrective action will result in a nonmonetary benefit. The implementation of the recommendation will result in improved objectivity of technical opinions during both contract creation and management after award.

COMMENT: Reference "Technical Assistance," page 38 of the Draft Report.

The referenced paragraph states that the technical personnel intentionally advised the contracting officer to "improperly modify the contract." The Agency agrees, in hind-sight, that questionable modifications were made to the contract; but rather by an act of omission of sufficient review and specific guidance rather than by commission or intent on the part of the technical personnel. Request that the above referenced section be appropriately reworded.

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